IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 172 OF 2004

Shri Sanjay Chandrabhan Gaikwad ..Applicant.

Versus

Yogeshwar Education Society & Ors. ..Respondents.

Ms. Smita Gaidhani for the Applicant.

Ms. Pushpa Diwan h/f. B.D.Joshi for the Respondents Nos. 1 to 3 & 5.

Ms. G.P.Mulekar, AGP for Respondent No. 4.

CORAM : B.H. MARLAPALLE, J.

DATED : 08TH SEPTEMBER,2005.

P.C.:

1. Heard Ms. Smita Gaidhani, the learned counsel for the applicant, who has filed regular civil suit No. 113/2001 before the learned civil Judge, Sr. Dvn. at Niphad in Nasik District for recovery of his salary for the month of June, 1998 onwards. He had contended in the said civil suit that from June, 1998 to May, 2000, he was not paid his salary as a teacher

by the defendants Nos. 1 and 3 and the said amount was claimed to be Rs.2,69,753/-. He had alleged that he was illegally denied the payment of salary and on the other hand he had learnt that in the books of accounts, the management had shown that he had been paid salary from June 1998 to March, 1999, amounting to Rs.1,63,795/-.

2. On notice, the defendants appeared before the court below and filed an application under section 9-A of the C.P.C., challenging the jurisdiction of the court. The learned civil Judge, Sr. Division, by his order dated 10.9.2004 upheld the objection to the jurisdiction raised by the defendants to entertain the suit and hence, this petition.

3. The Education Officer (Secondary), who was impleaded as defendant No.4, has filed an affidavit in reply and stated that the plaintiff possesses the qualification of B.A.B.Ed. and he was appointed as an Assistant Teacher on 27.06.1998 in the defendant No.1 School in the pay scale of Rs.1400/- to Rs.2600/-. His appointment was approved in the said pay scale from 23.11.1998 when the school was unaided and continued to be shown as such till November, 2003. As

per the said affidavit, the plaintiff has been paid an amount of Rs. 63,333/- for the period from December, 2004 to February 2005. It is thus clear that the School where the plaintiff was appointed remained as an unaided school from June, 1998 to May, 2000 for which period, the plaintiff sought to recover his unpaid salary and there is no doubt that the said school is run by defendant No.1 institution. It is thus a private school and section 3 (1) of the Maharashtra Employees of Private Schools (Conditions of Service), Regulation Act,1977 (for short "MEPS Act"), states that the provisions of the Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant in aid from the State Government or not. Section 9 of the MEPS Act, provides a remedy of an appeal to the School Tribunal. But the said remedy is confined only in respect of the grievance of dismissal, removal or termination of the service and reduction in rank. Even in the case of supersessions the remedy of appeal has been provided and such a remedy is not available for recovery of salary. However, the trial court has referred to the provisions of Rule 24 of the MEPS Rule, 1981 and held that there is an implied bar to file civil suit for recovery of unpaid salary. The

said rule reads as under :-

> 24. Submission of representations : (1) Representation from an employee in connection with his employment or his school to the Management or to the Department shall be addressed through the Head. He may, if he so desires, however, address an advance copy of his representation to the authorities. The receipt of the representation shall be acknowledged by the Head.
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> (2) Representation by the head of a School to the Department shall be routed through the Management.
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> (3) The Head or the Management as the case may be, shall take final decision on the representation addressed by an employee to him or it within fortnight from the receipt thereof. If the representation has been addressed to the Departmental authorities, the Head or Management, as the case may be shall forward the same to the Departmental authorities to whom it is addressed within 15

days from the date of receipt thereof with his or its remarks under intimation to the employee concerned, failing which the authority to whom the representation is addressed shall directly take action on the advance copy of the representation.

4. The learned counsel for the appellant states that he has already submitted a representation to the defendant No.4 on 29th of March, 2001 and obviously the said representation was required to be dealt with under rule 24 of the MEPS Rule. The defendant No.4 did not take requisite steps, may be because the defendant No.3 was not an aided school till December, 2003. However, but the scheme of section 3 of the MEPS Act, does show that the remedy available under the Act or the Rules, regarding any matter related to service as a teacher or an employee of all the private school, is available to all the employees of the unpaid private schools as well.

5. Thus the impugned order does not call for any interference but at the same time, it is the defendant No. 4, who has to take steps on the representation

submitted by the plaintiff and ensure that the unpaid salary amount is verified and paid to the plaintiff by the defendant Nos. 1 and 3, as early as possible.

6. The revision application is rejected summarily and the defendant No.4 is directed to take due steps on the representation submitted by the plaintiff so as to ensure that the unpaid salary amount is paid to him as expeditiously as possible and in any case within a period of three months from today.

DT.08.09.05 (B.H. Marlappalle,J)